

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**JACUILLE MOSS, MIKAL
MERRITT, JACINDA
KENNON, AGNES BRATTON,
TIFFANY SNYDOR,
INDIVIDUALLY AND AS
PARENT/GUARDIAN OF
AUSTIN COOK, ADRIANE
COOK, AND AEDAN COOK,**

Plaintiffs,

vs.

**DOUGLAS GUNDERSON,
METONE LIMITED
PARTNERSHIP,
METROPOLITAN BUILDING
CONCEPTS, INC., AND
WELLMAX, INC.,**

Defendants.

CIVIL ACTION FILE NO.

NOTICE OF REMOVAL

**TO: THE JUDGES, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION**

COMES NOW Defendants Douglas Gunderson, Metone Limited Partnership
and Wellmax, Inc. by and through undersigned removed this civil action captioned

Jacquille Moss, Mikal Merritt, Jacinda Kennon, Agnes Bratton, Tiffany Snyder, individually and as parent/guardian of Austin Cook, Adriane Cook, and Aedan Cook v. Douglas Gunderson, Metone Limited Partnerships, Metropolitan Building Concepts, Inc. and Wellmax, Inc., Civil File Action No.: 22A0468820-C-03017-S3 from the State Court of Dekalb County, Georgia to the United States District Court for the Northern District, Atlanta Division. Removal is based upon the following:

Removal Based on Diversity Jurisdiction Pursuant to 28 U.S.C § 1441

1. This Court has original jurisdiction of this matter pursuant to 28 U.S.C. § 1332 and this matter may be removed to this Court under 28 U.S.C. § 1441(a).

Description of Suit

2. The Plaintiffs filed a Complaint against Defendants Douglas Gunderson, Metone Limited Partnerships, Metropolitan Building Concepts, Inc. and Wellmax, Inc., alleging negligent maintenance and negligent security relating to fire that occurred on or about December 11, 2020 in Dekalb County, Georgia. See Plaintiff's Complaint, at 5–6 (Dec. 1, 2022), Exhibit 1.

3. Defendants filed their Answers in response to Plaintiffs' Complaint on or about January 6, 2023. [Answer of Defendant Douglas Gunderson [Ex. 2], Answer of Defendant Metone Limited Partnership [Ex 3] and Answer of Defendant Wellmax, Inc. [Ex. 4].

Compliance with Deadline for Removal

4. Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal. 28 U.S.C. §1446(b)(2).

5. On December 1, 2022, Plaintiffs filed their Complaint. See Plaintiff's Complaint, at 10 (Dec. 1, 2022), Exhibit 1. Defendants were served on December 8, 2022.

6. Defendants Douglas Gunderson, Metone Limited Partnership and Wellmax, Inc. Defendant have initiated removal within ("30") days of being served with Complaint and Summons.

7. The Notice of Removal is timely filed pursuant to 28 U.S.C. §1446(b)(2).

Consent for Removal

8. The procedure for removing a case to Federal Court is codified in 28 U.S.C. §1446 and it requires that all Defendants consent to the removal. *Cook v. Randolph County, Ga.*, 573 F.3d 1143, 1150 (11th Cir. 2009); *Tri-Cities Newspaper, Inc. v. Tri-Cities Printing Pressmen and Assistants' Local 349*, 427 F.2d 325, 326-27 (5th Cir. 1970).

9. The Defendants Douglas Gunderson, Metone Limited Partnerships and Wellmax, Inc. consent to this removal by and through their undersigned counsel of record. Upon information and belief, Defendants Metropolitan Building Concepts

consent to this removal, to wit: Douglas Gunderson owns a 100% interest in Metropolitan Building Concepts, Inc. He has communicated his consent to his personal undersigned counsel of record as Metropolitan Building Concepts does not yet have counsel.

The Diversity of Citizenship Requirement

10. Plaintiff is a citizen and resident of the State of Georgia. [Plaintiffs' Complaint, Ex. 1, ¶ 1].

11. Defendant Douglas Gunderson is a citizen and resident of Wisconsin and resides at W7297 Wild Turkey Lane, Shiocton, Wisconsin. [Plaintiffs' Complaint, Ex. 1, ¶ 2].

12. Defendant Metone Limited Partnership is a Wisconsin corporation with its principal place of business in Oshkosh in Winnebago County, Wisconsin. [Plaintiffs' Complaint, Ex. 1, ¶ 3].

13. Defendant Metropolitan Building Concepts, Inc. is a Wisconsin corporation with its principal place of business in Shiocton in Outagamie County, Wisconsin. [Plaintiffs' Complaint, Ex. 1, ¶ 4].

14. Defendant Wellmax, Inc. is a Wisconsin corporation with its principal place of business in Shiocton in Outagamie County, Wisconsin. [Plaintiffs' Complaint, Ex. 1, ¶ 5].

15. Complete diversity exists in this action.

The Amount of Controversy Requirement

16. Plaintiff's Complaint seeks damages on the basis of negligence, traumatic injuries, and subsequent pain and suffering, disability, loss of enjoyment of life, mental anguish, "loss of earnings, loss of ability to earn and loss of capacity for enjoyment of life" in addition to damages associated with medical bills, special damages, attorney's fees and cost of litigation, and all other damages to be proven at trial. [Plaintiff's Complaint, Ex. 1, ¶¶ 34-39]. Plaintiff's Complaint itemizes damages for Jacinda Kennon in the amount of \$385,549.85, for Mikal Merritt in the amount of \$219,399.02, for Agnes Bratton in the amount of \$609,782.91 and for Tiffany Snyder in the amount of \$726,066.42. [Plaintiff's Complaint, Ex. 1, ¶¶ 35]

17. The amount in controversy in this action exceeds \$75,000.00.

The State Court Proceeding

18. The state court proceeding is identified as follows: *Jacquille Moss, Mikal Merritt, Jacinda Kennon, Agnes Bratton, Tiffany Snyder, individually and as parent/guardian of Austin Cook, Adriane Cook, and Aedan Cook v. Douglas Gunderson, Metone Limited Partnerships, Metropolitan Building Concepts, Inc. and Wellmax, Inc.*, Civil File Action No.: 22A0468820-C-03017-S3 from the State Court of Dekalb County, Georgia to the United States District Court for the

Northern District, Atlanta Division. A Notice of Removal will be filed with the state court upon the filing of this Notice of Removal.

All State Court Documents

19. All state-court documents required to be filed with this notice are attached hereto: Plaintiff's Complaint [Ex. 1]; Answer of Defendant Douglas Gunderson [Ex. 2], Answer of Defendant Metone Limited Partnership [Ex 3] and Answer of Defendant Wellmax, Inc. [Ex. 4].

WHEREFORE, Defendants Douglas Gunderson, Metone Limited Partnership and Wellmax, Inc. wish to exercise their rights under the provisions of 28 U.S.C. § 1441, *et seq.* to remove this action from the State Court of Dekalb County, Georgia to the United States District Court, Northern District of Georgia, Atlanta Division.

/s/ Joseph A. Kaiser

Joseph A. Kaiser
Georgia Bar No. 323435
Ankur P. Trivedi
GA Bar No. 859811
Attorneys for Defendants Gunderson,
Metone Limited Partnership and
Wellmax, Inc.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1 B

This is to certify that this Notice of Removal was created in Times New Roman 14 point font in accordance with Northern District of Georgia Local Rule 5.1B.

W. Winston Briggs, Esq.
W. Winston Briggs Law Firm
3500 Lenox Road
Suite 1500
Atlanta, GA 30326
wbriggs@winstonbriggslaw.com

This 6th day of January, 2023.

/s/ Joseph A. Kaiser

Joseph A. Kaiser
Georgia Bar No. 323435
Ankur P. Trivedi
GA Bar No. 859811
Attorneys for Defendants Gunderson,
Metone Limited Partnership and
Wellmax, Inc.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel of record in the foregoing matter with the attached Notice of Removal with the clerk of Court via CM/ECF and/or PACER and/or electronic mail to the addressed as follows:

W. Winston Briggs, Esq.
W. Winston Briggs Law Firm
3500 Lenox Road
Suite 1500
Atlanta, GA 30326
wbriggs@winstonbriggslaw.com

This 6th day of January, 2023.

/s/ Joseph A. Kaiser

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